



TEXAS BOARD of VETERINARY MEDICAL EXAMINERS

FIFTH QUARTERLY REPORT  
TO THE SUNSET COMMISSION

January 31, 2018

## **Overview: Fifth Quarterly Report**

During this quarter, the agency continued to make significant progress toward the stability and leadership necessary to implement the Sunset Commission's recommendations.

The new executive director has filled the executive staff positions by hiring a Chief Financial Officer, Operations Director and appointing the interim General Counsel as the General Counsel. The agency is systematically reviewing the operations of each division to implement the Sunset Commission's recommended and required changes and other best practices.

The enforcement division has been the focus of this quarter's work. The new executive staff reviewed enforcement procedures related to inspections. As a result of this review, new inspection procedures have been created and investigators received training on the new procedures. The new procedures emphasize voluntary compliance, education, and customer service while conducting inspections. The executive staff also reviewed enforcement procedures related to complaint intake, complaint management, investigation, and disposition. Staff recommended several rule changes that were proposed at the January meeting related to the enforcement procedures.

**Issue 1 — Continue**

**Recommendation 1.1, Adopted** — Continue the State Board of Veterinary Medical Examiners for four years. The Sunset Commission staff shall limit the upcoming review of the veterinary board to the effectiveness of recommendations made by the Sunset Commission to the 85th Legislature, although the commission itself may include any recommendations it considers appropriate.

**Recommendation 1.2, Modified** — Update the standard Sunset across-the-board requirement related to board member training, including the board’s rulemaking authority and anti-trust actions.

**First Quarterly Report Response:**

The Board, at its most recent meeting, discussed the possibility of contracting with the Council on Licensing, Education, and Regulation (CLEAR) to come and put on a training session for Board members in the near future and coordinating with other HPC boards to have them involved and share the costs. Additionally, the agency has reached out to the Administrative Law section of the OAG to have a staff attorney from the OAG come and put on a training and Q and A session with the Board at the February Board meeting.

**Second Quarterly Report Response:**

Two staff attorneys from the Administrative Law Division of the OAG conducted additional open meetings training along with a question and answer session at the February 27, 2017 Board meeting.

The agency has purchased a five module webinar series through the Council on Licensing, Education, and Regulation (CLEAR) entitled Introduction to Regulatory Governance. As these modules are presented, the recordings are forwarded to board members for them to view at their convenience. The webinar series modules are:

1. Foundations of Occupational and Professional Regulation
2. Roles and Responsibilities
3. Administrative Rulemaking
4. Professional Discipline
5. Assessing Competence

The Board President and Board Secretary will be attending the American Association of Veterinary State Boards (AAVSB) “Board Basics and Beyond” training in Kansas City, MO on May 12 – 13, 2017. This is an interactive training session designed to provide comprehensive training on being a regulatory board member.

**Third Quarterly Report Response:**

The Board Secretary, Lynn Criner, D.V.M., attended the AAVSB training “Board Basics and Beyond” on May 12-13, 2017. The Board President was unable to attend due to health concerns. The Board Secretary, Interim Executive Director, and Interim General Counsel recently met for several hours to discuss training requirements and develop a strategy for training new and existing Board members. Board members and staff will continue developing detailed training manuals and in-person training programs.

**Fourth Quarterly Report Response:**

Staff has prepared a Board member training manual topic overview that addresses all statutorily required topics. Staff will continue to develop this training manual in the following quarter. On October 10, 2017, the newly appointed Board members received training regarding the Open Meetings Act and the Public Information Act prior to attending their first Board meeting. Agency staff will provide more extensive training on all the statutorily required topics following a half-day Board meeting on December 5, 2017.

**Fifth Quarterly Report Response:**

Agency staff provided extensive training on all the statutorily required topics following a half-day Board meeting on December 5, 2017.

**Issue 2 — Enforcement**

**Recommendation 2.1, Adopted** — Require the board to develop and adopt a schedule of sanctions in rule, and to use it in determining disciplinary actions.

*Note: This recommendation was designated as “Statutory,” and thus was not addressed in the first two quarterly reports.*

**Third Quarterly Report Response:**

The Interim General Counsel has prepared a format for the new schedule of sanctions rule. The new format will include guidelines for classifying violations, aggravating and mitigating factors for each violation type, and well-defined penalty ranges.

The new format was presented and discussed at the February 27, 2017 Board meeting. Staff has compiled data regarding past penalties for common violation types. This data will be used to establish the penalty ranges for those violations in the new schedule of sanctions rule.

**Fourth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Fifth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Recommendation 2.2, Modified** — Direct the agency to clearly define and consistently implement its enforcement procedures. In addition, the Sunset Commission adopted recommendations directing the agency to develop and publish policies governing a complainant’s access to information regarding his or her complaint. These policies should be written in plain language and easy to find on the agency website. (Management action – nonstatutory)

**First Quarterly Report Response:**

Policy and procedure manual is currently being developed and written. This is a lengthy and time consuming process; however, careful consideration is being taken to ensure consistency and best-practices.

Writing policies regarding the complainant's access to information will need to be a cooperative endeavor between enforcement, legal, and the public information officer.

**Second Quarterly Report Response:**

A comprehensive Enforcement Division Policy and Procedure Manual is has been written and is in the process of a final review. Currently, priority policies and procedures have been written and include: Processes for Data Entry into the SugarCRM (enforcement's data entry system); Enforcement Attire and Personnel Standards; Inspection Process (to include Risk-Based Inspections); Complaint Investigations Procedures; and the procedures for the Report of Investigations.

Policy regarding complainant access to information: TBVME Rules 575.27 and 575.28 specifically address how the Board's complaints are handled. The Director of Enforcement continues working with legal staff and public information staff to ensure information does not violate any public information act or jeopardize investigative process.

**Third Quarterly Report Response:**

The Director of Enforcement has drafted Enforcement policy manuals which are pending review and approval by the Legal department, Executive Director, and Board. The Interim General Counsel has created a first draft of a policy chart regarding access to complaint information. This policy chart reflects the revised language of Section 801.207, Occupations Code. The policy chart will be used internally effective September 1, 2017. A similar version (modified for clarity) will be available on the Board's website.

**Fourth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Fifth Quarterly Report Response:**

The new executive staff reviewed enforcement procedures related to complaint intake, complaint management, investigation, and disposition. Staff recommended several rule changes that were proposed at the January meeting related to the enforcement procedures.

**Recommendation 2.3, Adopted** — Direct the agency to improve its enforcement data tracking systems and processes. (Management action – nonstatutory)

**First Quarterly Report Response:**

Enforcement is currently working with our SugarCRM developer to improve data tracking. More tracking fields have already been added and investigators have been directed to utilize the "Notes" features in SugarCRM to allow executive staff to monitor the status of complaint investigations.

**Second Quarterly Report Response:**

The Director of Enforcement has provided priorities for data tracking. This has been hampered due to the departure of TBVME's in-house systems analyst. SugarCRM is a customized software package, making it difficult to make changes and access required data. Alternative methods are being looked into, such as using the TBVME's current document management

software company (Neubus), who may be able to provide alternative case management and data tracking solutions.

**Third Quarterly Report Response:**

Enforcement staff has compiled a list of methods to improve SugarCRM’s ability to capture and report additional tracking information. The inability to hire a Systems Analyst has preventing staff from making these improvements. Staff has been working with a vendor, Neubus (Neudocs), to develop a system that will allow for electronic storage of case reports. Case reports have traditionally been kept as paper copies and archived, making research on prior cases difficult and time consuming.

The Legal Department has developed a system in SugarCRM to track license applicants with criminal or disciplinary history. These applications are referred to the General Counsel for review, and occasionally referred for informal conferences or agreed licensure orders. Previously, these cases were not being tracked. The Legal Department has also implemented a compliance module in Sugar CRM to ensure timely compliance with Board orders.

**Fourth Quarterly Report Response:**

The Enforcement Division continues to struggle with SugarCRM’s inadequate data capture abilities and the agency’s lack of a System’s Analyst to make necessary database improvements. The agency will explore alternative database systems for enforcement data tracking and reporting.

**Fifth Quarterly Report Response:**

The new executive staff reviewed enforcement procedures related to complaint intake, complaint management, investigation, and disposition. They are also reviewing options to upgrade or replace the current SugarCRM system.

**Issue 3 — Controlled Substances**

**Recommendation 3.1, Adopted** — Clarify statute and direct the agency to monitor veterinarians dispensing and prescribing of controlled substances. Require the veterinary board and pharmacy board to develop guidelines for and determine the conduct that constitutes responsible prescribing and dispensing of certain controlled substances, and allow the agency to open investigations based on information obtained from the Prescription Monitoring Program.

Additionally, the Sunset Commission adopted a management action that directs the veterinary board and the pharmacy board to enter into a memorandum of understanding (MOU) to ensure the veterinary board has access to information about the sales of certain controlled substances by wholesale pharmaceutical distributors that will be reported to the pharmacy board as required by H.B. 2561. (S.B. 319 and H.B. 2561)

*Note: This recommendation was designated as “Statutory,” and thus was not addressed in the first two quarterly reports.*

**Third Quarterly Report Response:**

Once the Board has a quorum, staff will recommend that the Board designate an ad hoc committee to develop responsible prescribing and dispensing guidelines.

Board staff will work with the Pharmacy Board to develop the MOU regarding access to wholesale pharmaceutical distributor information.

**Fourth Quarterly Report Response:**

At its October 10, 2017 meeting, the Board voted to adopt a rule that allows for the creation of ad hoc committees. The Board president will likely appoint committee positions at the Board's next scheduled meeting on December 5, 2017. Staff will recommend that an ad hoc committee be designated at this time to develop responsible prescribing and dispensing guidelines.

**Fifth Quarterly Report Response:**

The new executive staff has scheduled a meeting with the DEA related to drug diversion and monitoring.

**Recommendation 3.2, Not Adopted** — The Legislature did not adopt the Sunset Commission's recommendations to require Texas veterinarians with a Drug Enforcement Administration registration to report dispensing data to the PMP and to search the PMP database and review a human client's animal-related prescription and dispensing history before prescribing or dispensing certain controlled substances.

The Sunset Commission did adopt a management action directing the State Board of Veterinary Medical Examiners and the Texas State Board of Pharmacy to enter into a MOU to develop standard data elements for entering dispensing information for animals into the PMP database. The boards developed and reported the data elements and querying practices in February 2017, and developed additional data elements relating to dispensing for herds in April 2017. (Management action – nonstatutory)

**Recommendation 3.3, Adopted** — Require the agency to collect and track relevant data to establish a risk-based approach to onsite inspections. The Sunset Commission also adopted a management action to direct the veterinary board to develop and implement a strategic inspection plan to improve licensee inspections. The plan should aim to inspect all licensees at least once every eight years. The agency should prioritize inspections based on

- licensees not inspected in the past 10 years or longer;
- licensees named in substantive, jurisdictional complaints; and
- licensees whom the agency has reason to believe dispense or prescribe unusually large amounts of controlled substances.

*Note: This recommendation was designated as "Statutory," and thus was not addressed in the first two quarterly reports.*

**Third Quarterly Report Response:**

Once the Board has a quorum, staff will recommend that the Board designate an ad hoc committee to develop risk-assessment criteria. Once the agency is able to hire a Systems Analyst, that person may be tasked with developing a system in Sugar CRM to track risk-

assessment criteria for clinics and licensees. *See Recommendation 3.4 for additional information regarding frequency of inspections.*

**Fourth Quarterly Report Response:**

The Enforcement Department filled two vacant investigator positions with field investigators located in the Dallas- Fort Worth and Houston regions. These regional investigators will focus on high-population areas of the state that may pose increased risks of controlled substance diversion.

**Fifth Quarterly Report Response:**

The new executive staff reviewed enforcement procedures related to inspections. As a result of their review, new inspection procedures have been created and investigators received training on the new procedures. The new procedures put an emphasis on voluntary compliance, education, and customer service while conducting inspections.

**Recommendation 3.4, Adopted** — The agency should create and implement inspection guidelines with aggravating and mitigating factors to evaluate controlled substances deficiencies recorded during onsite inspections. (Management action – nonstatutory)

**First Quarterly Report Response:**

We are currently writing an inspection procedure and policy manual to address concerns.

**Second Quarterly Report Response:**

The policy for inspection process has been written. Aggravating and mitigating factors for controlled substance related violations already exist in a sanctions matrix specifically created for DEA violations late last fall. It will also be included in the Board's revised schedule of sanctions rules, which are currently in development.

**Third Quarterly Report Response:**

The Director of Enforcement has drafted an inspection policy manual which is pending review and approval by the Legal Department, Executive Director, and Board. Aggravating and mitigating factors will be included in the Board's revised schedule of sanctions rule, which is in development.

One of the agency's investigators is now a remote, part-time position. The agency intends to hire two additional remote investigators when the hiring freeze ends on September 1, 2017. One remote investigator will be in the Houston area, the other will be in the Dallas area. Remote investigators can perform more frequent inspections in areas of the state that are less accessible to Austin-based investigators.

**Fourth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Fifth Quarterly Report Response:**

The new executive staff reviewed enforcement procedures related to inspections. As a result of their review, new inspection procedures have been created and investigators received training

on the new procedures. The new procedures put an emphasis on voluntary compliance, education, and customer service while conducting inspections.

**Recommendation 3.5, Adopted** — Direct the agency to develop a robust educational process to regularly educate licensees about controlled substances laws, rules, and inspection standards. (Management action – nonstatutory)  
(See Provisions Added by the Legislature for additional changes.)

**First Quarterly Report Response:**

Operations:

The agency has begun a monthly email distribution to all licensees. These emails will include not only information on controlled substance laws and inspection standards but proposed rule changes, common violations of the licensing act and board rules, as well as other pertinent topics.

Enforcement:

We are currently attempting to reach out to Texas A & M University and veterinary associations to conduct informational seminars.

We are working on identifying topics and developing outline/lesson plans for presentations.

We will be sending investigators to instructor development courses.

We will be updating the Enforcement Division page on our website with information regarding common violations found during inspections.

**Second Quarterly Report Response:**

Operations:

The agency continues to send out a monthly email to all licensees. In addition to these emails, TBVME staff will be in attendance at the first Veterinary Innovation Summit to be held April 28 – 30, 2017 at Texas A&M College of Veterinary Medicine & Biomedical Sciences. Staff will be available with informational materials on the laws, rules, compliance inspections, and will be able to answer general questions that licensees may have.

Enforcement:

TBVME has reached out to Texas A&M School of Veterinary Medicine, TVMA, and AVMA asking for notification to enforcement and other TBVME divisions of opportunities to interact with professionals in the veterinary community to educate and encourage voluntary compliance.

**Third Quarterly Report Response:**

Lack of travel budget and very limited investigator resources have prevented any additional educational outreach during the quarter. The agency has developed a working relationship with the Texas Animal Health Commission and Texas Racing Commission to provide resources to licensees within their jurisdiction. TBVME staff was in attendance at the first Veterinary Innovation Summit April 28 – 30, 2017 at Texas A&M College of Veterinary Medicine & Biomedical Sciences. Staff was available with informational materials on the laws, rules, compliance inspections, and to answer general questions.

**Fourth Quarterly Report Response:**

During the quarter, the Director of Enforcement gave an educational presentation to cervid veterinarians at a Texas Deer Association meeting. The Director of Enforcement also cooperated with the Texas Racing Commission to perform outreach to race track veterinarians at Retama Park and Lone Star Park. Controlled substance regulations were emphasized in these education efforts. Staff has also reached out to the Texas Veterinary Medical Association to discuss potential educational presentations at veterinary conferences in fiscal year 2018.

**Fifth Quarterly Report Response:**

The new executive staff has scheduled a meeting with the DEA related to drug diversion and monitoring.

**Issue 4 — Licensing Best Practices**

**Recommendation 4.1, Adopted** — Require the agency to conduct fingerprint-based criminal background checks of all licensure applicants and existing licensees.

*Note: This recommendation was designated as “Statutory,” and thus was not addressed in the first two quarterly reports.*

**Third Quarterly Report Response:**

On June 6, 2017, the agency submitted an application for an originating request identifier (ORI) to the FBI. This request takes approximately 90 days to process. Board staff has discussed strategies for notifying licensees and applicants of the fingerprinting requirements. When the agency is able to hire a Systems Analyst, that person will develop a system for tracking fingerprinting compliance in SugarCRM. Once the Board has a quorum, the Board will discuss whether to suspend or refuse to renew licenses for non-compliant licensees, and will propose and adopt related rules. Currently, Board staff expects that the agency will begin suspending or denying renewal for non-compliant licensees in 2019.

**Fourth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Fifth Quarterly Report Response:**

The agency has worked with DPS on obtaining a new ORI number and access to the FAST fingerprint system. The agency will be creating procedures in the next few months.

**Recommendation 4.2, Adopted** — Authorize the agency to provide biennial staggered license renewals for all license types.

**Recommendation 4.3, Adopted** — Remove the statutory limitation currently restricting the agency’s authority to lower fees.

**Recommendation 4.4, Adopted** — Prohibit a board member who reviews a standard of care investigation from participating in any resulting disciplinary proceeding, and allow the board to delegate medical reviews to licensed veterinarians who are not board members.

*Note: This recommendation was designated as “Statutory,” and thus was not addressed in the first two quarterly reports.*

**Third Quarterly Report Response:**

Unfortunately, the agency does not have the financial resources to hire third-party veterinarians to review complaints.

Currently, the same two veterinarian Board members conduct medical review and sit on the informal conference panel with a public Board member. If two different pairs of veterinarian Board members must be used, that would result in the recusal of five Board members in votes on these final orders. Thus, Board staff will draft rule changes to allow a single Board member to review standard of care complaints. That reviewing member will be recused from all further disciplinary action on the complaint.

**Fourth Quarterly Report Response:**

Staff will implement the new statutory requirements for all complaints filed on or after September 1, 2017. The Board will discuss other potential changes to the medical review process, including the number of veterinarians reviewing each complaint and the use of non-Board member reviewers, at the Board’s meeting in January 2018.

**Fifth Quarterly Report Response:**

Staff recommended rule changes that were proposed at the January meeting related to the medical review process. Additionally, Staff presented recommendations for new medical review procedures at the January meeting.

**Recommendation 4.5, Adopted** — Direct the agency to solicit and consider input from licensed veterinary technicians and equine dental providers on all rule changes and policy decisions affecting these license types. (Management action – nonstatutory)

**First Quarterly Report Response:**

When rules are proposed that specifically impact EDPs or LVTs we will utilize their respective advisory committees for input. In addition, all licensees who have an email address on file with the agency will receive email notifications when proposed rules have been published and the public comment period is open.

**Second Quarterly Report Response:**

The Board has not proposed any new rules that specifically impact EDPs or LVTs since the previous quarterly report. Board staff is drafting revised advisory committee rules that will require input from the EDP and LVT advisory committees before proposing or adopting rules that would impact those licensee populations. We have confirmed continued support from the EDP and LVT advisory committees.

**Third Quarterly Report Response:**

At the May 8 2017, Board meeting, the Board proposed a new committee rule. The proposed rule establishes a formal LVT committee that will assist and advise the Board on all LVT related rules and policies. The proposed rule also states that the EDP Advisory Committee (established

by statute) has the authority to assist and advise the Board on all EDP related rules and policies. The proposed rule was emailed to all licensees for public comment.

**Fourth Quarterly Report Response:**

At its October 10, 2017 meeting, the Board voted to adopt a rule recognizing the statutory Equine Dental Provider (EDP) Committee and creating a Licensed Veterinary Technician (LVT) Committee. These committees have the responsibility and authority to advise the Board in adopting rules related to their licensee types, and to consult with the Board regarding matters relating to a disciplinary action that involves their licensee types.

**Fifth Quarterly Report Response:**

At the January Board meeting, the Board received input from a member of the Licensed Veterinary Technician Committee regarding policy considerations affecting LVTs.

**Recommendation 4.6, Adopted** — Direct the agency to conduct continuing education audits as part of the license renewal process. (Management action – nonstatutory)

**First Quarterly Report Response:**

The Licensing Department will take over the continuing education audit. The process was created by the Director of Licensing and approved by the Board at the January 23, 2017 board meeting. The new audit process will be implemented in February.

**Second Quarterly Report Response:**

The new audit process will begin after we are able to hire a new systems analyst and a new module is created in Sugar (agency database) to track the audits.

**Third Quarterly Report Response:**

The new audit process will begin after the agency is able to hire a new Systems Analyst to create a module in SugarCRM to track the audits.

**Fourth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Fifth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Recommendation 4.7, Adopted** — Direct the agency to evaluate jurisprudence exam questions for each license type and create question banks for its jurisprudence exams. (Management action – nonstatutory)

**First Quarterly Report Response:**

The Board agreed at the January 23, 2017 board meeting that the LVT Advisory Committee will review the LVT questions, the EDP Advisory Committee will review the EDP questions, and a DVM Advisory Committee (yet to be formed) will review the DVM questions. A question bank was created in October and is currently in place for all exam types.

**Second Quarterly Report Response:**

The full board will be reviewing the current exam questions in executive session during the May 8, 2017 board meeting. LVT and EDP exam questions will be sent to their respective committees for input after the May 8th board meeting.

**Third Quarterly Report Response:**

At the May 8, 2017 Board meeting, the Board evaluated and approved exam questions for each license type. In the future, LVT and EDP exam questions will be submitted to their respective advisory committees for review. This was not possible this year due to a legal error in the agency's previous advisory committee procedures. These legal errors have been corrected in the new committee rule proposed at the May 8, 2017 Board meeting.

**Fourth Quarterly Report Response:**

At its October 10, 2017 meeting, the Board voted to adopt a rule recognizing the statutory Equine Dental Provider (EDP) Committee and creating a Licensed Veterinary Technician (LVT) Committee and a standing Licensing Committee of Board members. These committees may be used to evaluate exam questions for their respective license types.

**Fifth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Recommendation 4.8, Adopted** — Direct the agency to remove the notarization requirement and evaluate other application requirements to streamline temporary license processing. (Management action – nonstatutory)

**First Quarterly Report Response:**

The notary requirement was removed and the Board will consider proposed Rule 571.15 to help streamline temporary licensing processing.

**Second Quarterly Report Response:**

The current board members decided not to make any significant rule changes until there a complete membership, therefore, the proposal to Rule 571.15 has been put on hold.

**Third Quarterly Report Response:**

At the October 18, 2016, Board meeting, the Board voted to propose changes to Board Rule 571.15, regarding temporary licenses. The proposed changes would have streamlined the temporary licensing process. The rules were eligible for adoption at the January 23, 2017 Board meeting. Based on a public comment, the Board decided not to make any substantive rule changes until the Board has complete membership. The proposed changes to the rule will be revisited at a later date.

**Fourth Quarterly Report Response:**

Staff will present the previously proposed changes to Rule 571.15 to the Licensing Committee for reconsideration.

**Fifth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Recommendation 4.9, Adopted** — Direct the agency to improve tracking of non-jurisdictional complaints. (Management action – nonstatutory)

**First Quarterly Report Response:**

Enforcement:

Working with IT to ensure that non-jurisdictional tracking is more comprehensive. New fields have already been added.

IT:

Sunset recommendations for the DOCKET\_VIOLATION field directed the agency to add new subsets of Non-Jurisdictional violation types. These new menu options were added on 10/19/2016 and are functional in the agency database.

**Second Quarterly Report Response:**

Non-jurisdictional fields have been added to collect data.

*Note: This recommendation has been completed.*

**Issue 5 — Shelter Veterinarians**

**Recommendation 5.1, Not Adopted** — Request the Senate Committee on Agriculture, Water, and Rural Affairs and the House Committee on Agriculture and Livestock to take action to clearly define the scope and limits of the statutory owner exemption in the Veterinary Licensing Act.

**Recommendation 5.2, Not Adopted** — Direct the State Board of Veterinary Medical Examiners to provide the legislative committees of jurisdiction proposed statutory definitions of designated caretaker.

**Recommendations 5.1, 5.2, Modified** — In lieu of staff Recommendations 5.1 and 5.2, the Sunset Commission adopted a management action to direct the agency to follow the State Office of Administrative Hearing’s current guidance on the scope of the owner and designated caretaker exemptions in its enforcement processes. (Management action – nonstatutory)

**First Quarterly Report Response:**

At the TBVME meeting on January 23<sup>rd</sup>, The Board was informed of SOAH’s guidance on the scope of the owner and designated caretaker exemptions and how it impacts the enforcement process. A discussion was had and the agency will be following the guidance set forth in the SOAH decision. Enforcement of shelter vets will be limited to controlled substance logs.

**Second Quarterly Report Response:**

The previous quarterly report inaccurately reported that enforcement of shelter vets will be limited to controlled substance logs. Based on SOAH's guidance, Board staff has developed a two-step process for investigating cases where the owner or designated caretaker exemption may be implicated. In those cases, Board staff will conduct a preliminary investigation to determine

whether it has jurisdiction. The Board's legal counsel will review the results of the preliminary investigation and use SOAH's guidance to determine whether the elements of the exemption are satisfied. If the exemption applies, the case will be closed. If the exemption does not apply, Board staff will proceed with a standard investigation.

**Third Quarterly Report Response:**

The agency has continued to follow SOAH's guidance.

**Fourth Quarterly Report Response:**

The agency has continued to follow SOAH's guidance.

**Fifth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**New Issues Added by the Sunset Commission**

**Board composition, Modified** — Adjust the composition of the nine-member State Board of Veterinary

Medical Examiners to consist of

- five licensed veterinarians, one of whom must be associated with an animal shelter and one of whom must have at least three years of experience practicing veterinary medicine in this state on horses, livestock, or other large animals;
- one licensed veterinary technician; and
- three public members.

In making the licensee member appointments, the governor must first appoint the shelter veterinarian, large animal veterinarian, and veterinary technician. Current board members would be eligible for reappointment.

**Board member training, Adopted** — Direct the agency to improve its board member training. The agency should ensure that all board members fully understand their duties and responsibilities specified by the board member training requirements in Section 801.057, Texas Occupations Code, including the agency's statute and rules, programs, functions, and budget. The agency should also ensure board members understand their authority to employ and responsibility to oversee the executive director.

Training should emphasize the board's role in understanding and approving important agency documents such as large contracts and the agency's strategic plan. (Management action – nonstatutory)

*Note: Please see the agency's response to Recommendation 1.2.*

**Conflict of interest policies, Adopted** — Direct the veterinary board to develop and adopt conflict of interest policies regarding board member involvement in the agency's complaint investigation and enforcement processes. These policies should require board members to disclose any conflicts of interest in regard to a complaint before the board or board member, and to recuse themselves

from participating in any investigation or resulting disciplinary action involving the complaint. These policies should be written in plain language, and be posted and easy to find on the agency's website. (Management action – nonstatutory)

**First Quarterly Report Response:**

Agency staff is currently developing new conflict of interest policies. These new policies will be discussed at the February 27<sup>th</sup> Board meeting.

**Second Quarterly Report Response:**

Conflict of interest policies were not discussed at the February 27<sup>th</sup> Board meeting. Board staff will prepare a draft of a conflict of interest rule to present to the Board once the Board has complete membership. These policies will also be part of our new Board Member Training policies.

**Third Quarterly Report Response:**

Board staff will prepare a conflict of interest rule or policy to present to the Board for approval once the Board has a quorum. The rule or policy will be included as part of Board member training.

**Fourth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Fifth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Chief Fiscal Officer job description, Adopted** — Direct the agency to review and update the current job description for the Chief Fiscal Officer position. The agency should modify the qualifications, responsibilities, and job duties as needed to ensure the job description accurately represents the actual requirements of the position. The executive director would then ensure the agency hires someone in this position who is qualified and properly trained to perform these duties. (Management action – nonstatutory)

**First Quarterly Report Response:**

After review of the job description for the Chief Fiscal Officer (CFO) position, we have made a few minor changes to it. We feel that the job description overall is very comprehensive and represents the actual responsibilities and requirements for the position. A copy of the revised description, including a title change to “Director of Finance”, is attached.

**Fifth Quarterly Report Response:**

The new executive director hired a Chief Financial Officer who has approximately 25 years of state experience most of which was with a state licensing agency.

*Note: This recommendation has been completed and updated.*

**Career ladder program, Adopted** — Direct the agency to develop and implement a career ladder program as required by Section 801.106(a), Texas Occupations Code. The career ladder information should be available in the employee manual or a similar document provided to all

staff. (Management action – nonstatutory)

**First Quarterly Report Response:**

The agency has created a more detailed career ladder and published this in the employee handbook which was provided to staff in December 2016. The career ladder language is as follows:

Board staff are encouraged to seek career development opportunities whenever possible. As position responsibilities change and grow, the Executive Director may, at his or her discretion, promote an employee to a higher level within the same classification title if the employee meets the minimum qualifications of the proposed level.

As positions of a higher level become vacant, Board staff are encouraged to apply. The requirements of the Board's Selection, Verification of References/Education, and Authorization for Payroll policy 3.2.6, will apply.

State Classification guidelines will not be altered by the existence of career ladder information. The career ladder will not provide preferential treatment to current staff over outside applicants based on length of service. All applicants are required to meet the specified minimum qualification requirements.

Classification of all positions will be based on duties assigned to the position in accordance with rules set down by the State Auditor's Office.

*Note: This recommendation has been completed.*

**Confidentiality of complaints, Adopted** — Require the veterinary board to maintain confidentiality of complaints, investigative reports, adverse reports, the identity of a non-testifying complainant, and other investigative information in the possession of, or received or gathered by the board or its employees or agents relating to a license holder, license application, or criminal investigation or proceeding. Require the board to protect the identity of the complainant to the extent possible. Prohibit the board from accepting anonymous complaints.

Require complaints filed with the board by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a licensee to include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint.

Require the board to notify, within 15 days of the complaint being filed, the licensee who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

**First Quarterly Report Response:**

Regarding complaint confidentiality, unless they are third-party complaints, it is impossible to keep the identity of a complainant confidential as the investigative process requires the animal's patient records, which are often under the names of the complainants.

As a matter of protocol, anonymous complaints are generally not accepted; however, some of the anonymous complaints that are received are sent as a result of flyers or social media postings. Many of these deal with the practice of veterinary medicine without a license. In cases such as these, it would not be in the best interest of protecting the public if these cases were simply ignored due to the anonymity of the complainant.

Complaints by an insurance agent, insurer, pharmaceutical company, or 3rd party administrator could be addressed by rule or agency policy, with guidance from the legal department regarding the proper protocol.

The 15-day notice requirement to the licensee should not be an issue; however, this seems to contradict the recommendation regarding the confidentiality of a complainant.

**Second Quarterly Report Response:**

Board Staff will prepare a draft rule addressing confidentiality of complaints and access to complaint information. The draft rule will include provisions that satisfy the management recommendations to the greatest extent possible. This rule draft will be presented to and considered by the Board once the Board has complete membership.

**Third Quarterly Report Response:**

The Interim General Counsel has created a first draft of a policy chart regarding access to complaint information. This policy chart reflects the revised language of Section 801.207, Occupations Code. The policy chart will be used internally effective September 1, 2017. A similar version (modified for clarity) will be made available on the Board's website.

Board staff will draft rule changes and modify enforcement procedures to reflect the new confidentiality and notice requirements. Rule changes cannot be proposed or adopted until the Board has a quorum, but Board staff will begin following the statutory requirements September 1, 2017. Because the Board's existing rules conflict with the new statutes, Board staff anticipates confusion among licensees and complainants until the rules can be changed.

**Fourth Quarterly Report Response:**

Staff will implement the new statutory requirements for all complaints filed on or after September 1, 2017. Staff has revised investigative templates and been re-trained to protect the identity of complainants. Staff will draft rule amendments that reflect the statutory changes.

**Fifth Quarterly Report Response:**

Staff recommended several rule changes that were proposed at the January meeting reflecting the new statutory requirements.

**Access to licensee response, Adopted** —Direct the board to modify existing rules to allow a complainant to receive all of the licensee's responses to the complaint during an investigation under Title 22, Texas Administrative Code, Section 575.28(6)–(7). (Management action – nonstatutory)

**First Quarterly Report Response:**

Access to licensee response: Unless the legal department determines otherwise, enforcement sees no reason why all responses could not be sent.

**Second Quarterly Report Response:**

The agency intends to propose rule changes that would allow complainants to receive all licensee responses to a complaint. In the meantime, until a rule change can be made, complainants may request a copy of the additional response through the open records process and unless it could jeopardize the investigation, a copy will be provided.

**Third Quarterly Report Response:**

This recommendation directly contradicts the statutory changes to Section 801.207, Occupations Code, made by SB 319. This section makes all investigative material confidential, and does not permit the agency to release any of a licensee’s responses to a complainant. The statutory changes to Section 801.208(d) also prohibit the agency from giving any investigative material to a complainant in a notification of complaint disposition.

*Note: The agency cannot comply with this recommendation.*

**Fourth Quarterly Report Response:**

Staff will prepare a letter to the Attorney General requesting an opinion as to whether the agency may follow this recommendation by releasing copies of licensee responses to complainants, notwithstanding the confidentiality provisions Section 801.207, Occupations Code.

**Fifth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Access to investigation outcomes, Adopted** — Statutorily require the agency to provide a clear and easily understood summary of the outcome of a complaint investigation to the complainant. While investigatory records would remain confidential, the agency would be required to provide more information than the mere outcome of the complaint.

Also, as a management action, direct the agency to provide more information on the reasons for a complaint dismissal by revising its current case information letters, including case closing letters, to provide an explanation of the reason(s) for dismissal, as well as an explanation of the appeals process.

**First Quarterly Report Response:**

Enforcement feels that the complainants would benefit from having a more detailed notice of case closure. Many complainants call upset due to their case being closed without further explanation. Including a little more detail as to why the case was closed may reduce appeals and would show more transparency of the agency to the general public.

**Second Quarterly Report Response:**

Board enforcement and legal staff have been developing strategies to provide complainants with more detailed information regarding the reasons for a complaint dismissal. Board staff intends to introduce procedures that require more detailed rationale from veterinarians reviewing cases requiring medical expertise. This would allow Board staff, who are not veterinary medical professionals, to communicate more detailed information to complainants in closing correspondence. In the interim, Board members that conduct medical reviews have been asked to provide a more detailed medical rationale for complaint dismissal.

**Third Quarterly Report Response:**

The Legal Department will compose notifications of final disposition for every complaint that is dismissed. In cases requiring medical review, the reviewing veterinarian(s) will be required to provide the Legal department with a detailed rationale for their medical opinion. For complaints that result in an agreed order, the order will be attached to the notice of final disposition and no additional explanation will be composed.

Board staff anticipates that this will consume significant Legal resources, and will increase complaint resolution time. Board staff also anticipates that some parties will have unrealistic expectations regarding the level of detail in the rationale provided.

**Fourth Quarterly Report Response:**

Staff will implement the new statutory requirements for all complaints filed on or after September 1, 2017.

**Fifth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Access to disciplinary status of licensees, Adopted** — Direct the agency to ensure its website accurately reflects the disciplinary status of its licensees and make all approved disciplinary orders easily accessible and readily available on its website. The website should state the disciplinary status for a licensee as “NO” only if the licensee has not received any disciplinary action, whether formal or informal. (Management action – nonstatutory)

**First Quarterly Report Response:**

The TBVME is currently working to make all disciplinary orders easily accessible and available on its website. The agency hopes to have this task complete before the next quarterly report is due to the Sunset Commission. Additionally, beginning on February 1<sup>st</sup>, the disciplinary status of a licensee will only appear as “NO” if the licensee has not received any disciplinary action, whether formal or informal.

**Second Quarterly Report Response:**

The Board's website now states the disciplinary status for a licensee as "NO" only if the licensee has not received any disciplinary action, whether formal or informal. However, the agency does not publish agreed orders on the website unless they include a formal reprimand. Licensees who have entered into agreed orders with informal reprimands did so with an explicit understanding that those orders would not be published on the website. However, these orders are still available through open records requests.

Board staff intends to revisit the formal/informal reprimand structure and corresponding Board rules during the development of the Board's new schedule of sanctions rules.

**Third Quarterly Report Response:**

The agency strongly disagrees that all orders, no matter how minor, should be readily available on the agency's website. The ability to keep certain orders off the agency's website is an extremely powerful settlement tool that is commonly used by numerous other state agencies.

The new schedule of sanctions will set stricter standards for the types of violations that are eligible for informal reprimands. The notice-and-comment rulemaking process will allow the public to provide input on which violation types should result in formal reprimands.

**Fourth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Fifth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Quarterly reporting, Adopted** —Direct the veterinary board to provide written quarterly reports to the Sunset Commission regarding the implementation of the recommendations adopted by the commission, beginning January 31, 2017. (Management action – nonstatutory)

**Provisions Added by the Legislature**

**Veterinary Licensing Act exemption** — Exempt licensed healthcare professionals who provide treatment or care to zoo and aquarium animals under direct supervision of a veterinarian from the Veterinary Licensing Act in limited circumstances.

**Inactive license status** — Prohibit the agency from limiting the amount of time a licensee can remain on inactive license status.

*Note: This recommendation was designated as "Statutory," and thus was not addressed in the first two quarterly reports.*

**Third Quarterly Report Response:**

The agency will no longer consider a license expired on the tenth "inactive" year, and the Licensing department has been trained regarding the statutory changes. Currently, SugarCRM automatically flags licenses on their ninth "inactive" year to prohibit those licensees from renewing online. Until the agency can hire a Systems Analyst (IT) to modify this programming, these licensees will be required to renew by mail.

Once the Board has a quorum, staff will draft rule changes to reflect the statutory change.

**Fourth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Fifth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Rabies quarantine** — Require veterinarians and local rabies control authorities to provide certain notifications to owners of animals submitted for quarantine and to uniquely identify any animal under quarantine.

**Automatic PMP registration** — Require the veterinary board to provide licensee information to the pharmacy board, and require the pharmacy board to use this information to automatically register practitioners to use the PMP database. (H.B. 2561)

*Note: This recommendation was designated as “Statutory,” and thus was not addressed in the first two quarterly reports.*

**Third Quarterly Report Response:**

The agency is prepared to provide this information, and is awaiting the request and formatting instructions from the Pharmacy Board.

**Fourth Quarterly Report Response:**

The agency has no additional information to report on this item for this quarter.

**Fifth Quarterly Report Response:**

The agency has provided the PMP with the requested information.

**Drug diversion interim study** — Require a joint interim study of changes to the Prescription Monitoring Program and the extent of drug diversion by animal owners by January 1, 2019 to understand the impacts of the database on controlled substance abuse and guide potential future changes. (H.B. 2561)